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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2003 63510

JAYME DAWN JACOBS
1308 Farragut Circle
Davis, CA 95616

A C C U S A T I O N

Physical Therapist No. PT 27169

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about April 9, 2002, the Physical Therapy Board of California issued Physical Therapist Number PT 27169 to Jayme Dawn Jacobs (Respondent). The Physical Therapist was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2005, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2609 of the Code states:
The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

5. Section 2660 of the Code states:
The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

- (a) Advertising in violation of Section 17500.
- (b) Fraud in the procurement of any license under this chapter.
- (c) Procuring or aiding or offering to procure or aid in criminal abortion.
- (d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapy assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.”
- (e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.
- (f) Habitual intemperance.
- (g) Addiction to the excessive use of any habit-forming drug.
- (h) Gross negligence in his or her practice as a physical therapist.
- (i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

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2 (j) The aiding or abetting of any person to violate this chapter or any
3 regulations duly adopted under this chapter.

4 (k) The aiding or abetting of any person to engage in the unlawful practice
5 of physical therapy.

6 (l) The commission of any fraudulent, dishonest, or corrupt act which is
7 substantially related to the qualifications, functions, or duties of a physical
8 therapist.

9 (m) Except for good cause, the knowing failure to protect patients by
10 failing to follow infection control guidelines of the board, thereby risking
11 transmission of blood-borne infectious diseases from licensee to patient, from
12 patient to patient, and from patient to licensee. In administering this subdivision,
13 the board shall consider referencing the standards, regulations, and guidelines of
14 the State Department of Health Services developed pursuant to Section 1250.11 of
15 the Health and Safety Code and the standards, regulations, and guidelines
16 pursuant to the California Occupational Safety and Health Act of 1973 (Part 1
17 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing
18 the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health
19 care settings. As necessary, the board shall consult with the Medical Board of
20 California, the California Board of Podiatric Medicine, the Board of Dental
21 Examiners of California, the Board of Registered Nursing, and the Board of
22 Vocational Nursing and Psychiatric Technicians, to encourage appropriate
23 consistency in the implementation of this subdivision.

24 The board shall seek to ensure that licensees are informed of the responsibility of
25 licensees and others to follow infection control guidelines, and of the most recent scientifically
26 recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

27 (n) The commission of verbal abuse or sexual harassment.

28 6. Section 2661.5 of the Code states:

1 (a) In any order issued in resolution of a disciplinary proceeding before
2 the board, the board may request the administrative law judge to direct any
3 licensee found guilty of unprofessional conduct to pay to the board a sum not to
4 exceed the actual and reasonable costs of the investigation and prosecution of the
5 case.

6 (b) The costs to be assessed shall be fixed by the administrative law judge
7 and shall not in any event be increased by the board. When the board does not
8 adopt a proposed decision and remands the case to an administrative law judge,
9 the administrative law judge shall not increase the amount of the assessed costs
10 specified in the proposed decision.

11 (c) When the payment directed in an order for payment of costs is not
12 made by the licensee, the board may enforce the order of payment by bringing an
13 action in any appropriate court. This right of enforcement shall be in addition to
14 any other rights the board may have as to any licensee directed to pay costs.

15 (d) In any judicial action for the recovery of costs, proof of the board's
16 decision shall be conclusive proof of the validity of the order of payment and the
17 terms for payment.

18 (e) (1) Except as provided in paragraph (2), the board shall not renew
19 or reinstate the license or approval of any person who has failed to pay all
20 of the costs ordered under this section.

21 (2) Notwithstanding paragraph (1), the board may, in its
22 discretion, conditionally renew or reinstate for a maximum of one year the
23 license or approval of any person who demonstrates financial hardship and
24 who enters into a formal agreement with the board to reimburse the board
25 within that one year period for those unpaid costs.

26 (f) All costs recovered under this section shall be deposited in the
27 Physical Therapy Fund as a reimbursement in either the fiscal year in which the
28 costs are actually recovered or the previous fiscal year, as the board may direct.

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3 7. Section 2661 of the Code states:

4 A plea or verdict of guilty or a conviction following a plea of nolo contendere
5 made to a charge of a felony or of any offense which substantially relates to the qualifications,
6 functions, or duties of a physical therapist is deemed to be a conviction within the meaning of
7 this article. The board may order the license suspended or revoked, or may decline to issue a
8 license, when the time for appeal has elapsed, or the judgement of conviction has been affirmed
9 on appeal or when an order granting probation is made suspending the imposition of sentence,
10 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person
11 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
12 of guilty, or dismissing the accusation, information, or indictment.

13 8. Business and Professions Code section 125.3. states that:

14 (a) Except as otherwise provided by law, in any order issued in resolution of a
15 disciplinary proceeding before any board within the department or before the Osteopathic
16 Medical Board or the board created by the Chiropractic Initiative Act, the board may
17 request the administrative law judge to direct a licentiate found to have committed a
18 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs
19 of the investigation and enforcement of the case.

20 (b) In the case of a disciplined licentiate that is a corporation or a partnership, the
21 order may be made against the licensed corporate entity or licensed partnership.

22 (c) A certified copy of the actual costs, or a good faith estimate of costs where
23 actual costs are not available, signed by the entity bringing the proceeding or its
24 designated representative shall be prima facie evidence of reasonable costs of
25 investigation and prosecution of the case. The costs shall include the amount of
26 investigative and enforcement costs up to the date of the hearing, including, but not
27 limited to, charges imposed by the Attorney General.

28 (d) The administrative law judge shall make a proposed finding of the amount of

1 reasonable costs of investigation and prosecution of the case when requested pursuant to
2 subdivision (a). The finding of the administrative law judge with regard to costs shall not
3 be reviewable by the board to increase the cost award. The board may reduce or
4 eliminate the cost award, or remand to the administrative law judge where the proposed
5 decision fails to make a finding on costs requested pursuant to subdivision (a).

6 (e) Where an order for recovery of costs is made and timely payment is not made
7 as directed in the board's decision, the board may enforce the order for repayment in any
8 appropriate court. This right of enforcement shall be in addition to any other rights the
9 board may have as to any licentiate to pay costs.

10 (f) In any action for recovery of costs, proof of the board's decision shall be
11 conclusive proof of the validity of the order of payment and the terms for payment.

12 (g) (1) Except as provided in paragraph (2), the board shall not renew or
13 reinstate the license of any licentiate who has failed to pay all of the costs ordered
14 under this section.

15 (2) Notwithstanding paragraph (1), the board may, in its discretion,
16 conditionally renew or reinstate for a maximum of one year the license of any
17 licentiate who demonstrates financial hardship and who enters into a formal
18 agreement with the board to reimburse the board within that one-year period for
19 the unpaid costs.

20 (h) All costs recovered under this section shall be considered a reimbursement for
21 costs incurred and shall be deposited in the fund of the board recovering the costs to be
22 available upon appropriation by the Legislature.

23 (i) Nothing in this section shall preclude a board from including the recovery of
24 the costs of investigation and enforcement of a case in any stipulated settlement.

25 (j) This section does not apply to any board if a specific statutory provision in that
26 board's licensing act provides for recovery of costs in an administrative disciplinary
27 proceeding.

28 9. Section 493 of the Code states:

1 “Notwithstanding any other provision of law, in a proceeding conducted by a
2 board within the department pursuant to law to deny an application for a license or to suspend or
3 revoke a license or otherwise take disciplinary action against a person who holds a license, upon
4 the ground that the applicant or the licensee has been convicted of a crime substantially related to
5 the qualifications, functions, and duties of the licensee in question, the record of conviction of the
6 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
7 and the board may inquire into the circumstances surrounding the commission of the crime in
8 order to fix the degree of discipline or to determine if the conviction is substantially related to the
9 qualifications, functions, and duties of the licensee in question.

10 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and
11 ‘registration.’”

12 10. Section 498 of the Code states:

13 “A board may revoke, suspend, or otherwise restrict a license on the ground that
14 the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact
15 or by knowingly omitting to state a material fact.”

16 FIRST CAUSE FOR DISCIPLINE

17 (Licensure by Fraud)

{Bus. & Prof. Code Sections 498, 2660(b)}

18 11. Respondent is subject to disciplinary action under sections 498 and 2660
19 (b) in that she acquired her Physical Therapist license knowing that she had misrepresented,
20 and/or omitted, a material fact on her application for licensure relative to information which the
21 Board requested pertaining to any conviction(s) of a crime. The circumstances are as follows:

22 12. On or about January 24, 2002, Respondent filed an application for
23 licensure with the Physical Therapy Board of California utilizing the Board’s application form.
24 Question number 18 on the second page of the application form asked the applicant “Have you
25 ever been convicted of, or pled nolo contendere to any offense in any state in the United States or
26 a foreign country?” The possible answers provided on the form were boxes to be marked by the
27 applicant as “Yes” or “No”. For applicants checking “Yes” to question 18, the Board requested
28 detailed information on such convictions or pleas, and submission of relevant court documents.

Respondent checked “No”, to question 18, indicating that she had not been convicted of any crime in any state in the United States or a foreign country. Respondent signed the application under penalty of perjury on or about January 22, 2002, affirming that the information she provided therein was true. At the time Respondent indicated she had no prior criminal convictions in any state, Respondent knew or had reason to know she had been convicted of Driving Under the Influence (DUI), in Boulder County Court, in the State of Colorado, on May 26, 2000, based on her plea of guilty. The plea followed her arrest and charges for DUI on or about February 26, 2000. Respondent failed to disclose her conviction on her application for licensure and failed to provide the information and documentation requested by the Board for such convictions at the time of her application.

SECOND CAUSE FOR DISCIPLINE
(Conviction of a Crime Substantially Related)
[Bus. & Prof. Code Section 2660 (d)]

13. Respondent is subject to disciplinary action under section 2660 (d) of the Code in that she was convicted of an offense substantially related to the qualifications, functions or duties of a physical therapist. The circumstances are as follows:

14. On or about February 22, 2000, at or about 0350 hours, Respondent was operating her motor vehicle, a Volkswagen Passat, on Highway 93 in Boulder County, in the State of Colorado. Respondent stopped her vehicle on the roadway, in the right lane, next to a Deputy Sheriff from the Boulder County Sheriff’s department who was engaged in a traffic stop with another driver. Respondent asked the officer for directions to Interstate 70. The officer immediately observed that Respondent appeared to be under the influence of alcohol. Her eyelids drooped, her eyes were red, he speech was slurred, and she emitted a strong odor of alcohol. Upon being questioned, Respondent admitted having consumed alcohol. Respondent thereafter failed field sobriety tests, and voluntarily took a breath test to determine blood alcohol level. An “Intoxilyzer” test of Respondent’s breath, administered at or about 0449 hours by the Boulder County Sheriff’s Department, revealed a blood alcohol level of .187, more than twice the legal limit while operating a motor vehicle. On or about May 26, 2000, Respondent pled guilty to Driving Under the Influence (of alcohol). Based on her plea, Respondent was sentenced

1 to 40 hours Community Service, fines, and 1 year of Probation. Respondent completed her term
2 of probation on May 26, 2001.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Physical Therapy Board of California issue a
6 decision:

7 1. Revoking or suspending Physical Therapist Number PT 27169, issued to
8 Jayme Dawn Jacobs;

9 2. Ordering Jayme Dawn Jacobs to pay the Physical Therapy Board of
10 California the reasonable costs of the investigation and enforcement of this case, pursuant to
11 Business and Professions Code section 2661.5;

12 3. Taking such other and further action as deemed necessary and proper.
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14 DATED: February 17, 2004.
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16 Original Signed By:
17 STEVEN K. HARTZELL
18 Executive Officer
19 Physical Therapy Board of California
20 Department of Consumer Affairs
21 State of California, Complainant

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23 Jacobs Accusation 021104.wpd
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